

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>LIEL LAKE</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,017,014
<b>MASONITE DOOR CORPORATION</b>	)	
Respondent	)	
AND	)	
	)	
<b>SAFETY FIRST INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals the July 28, 2005 preliminary hearing Order of Administrative Law Judge Kenneth J. Hursh. The Administrative Law Judge (ALJ) denied claimant additional medical treatment after determining that claimant may have had a temporary increase in symptoms "at most."<sup>1</sup>

**ISSUE**

The following issue was presented to the Appeals Board (Board) in claimant's Application for Review:

The Claimant alleges that the Administrative Law Judge erred in his finding by denying the Claimant medical treatment to his low back.<sup>2</sup>

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds the preliminary hearing Order of the ALJ remains in full force and effect.

Claimant suffered accidental injury on January 19, 2004, when, while pulling a steel door out of a mold, he experienced pain in his groin. Claimant also alleges low back pain, but that part of claimant's alleged injury is disputed by respondent. The above issue

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<sup>1</sup> Preliminary hearing Order (July 28, 2005) at 2.

<sup>2</sup> Claimant's Application For Review at 1.

appealed by claimant states the only dispute is whether claimant is entitled to medical treatment for the low back. Pursuant to K.S.A. 44-534a and K.S.A. 2004 Supp. 44-551, the Board is limited to which issues may reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide both timely notice and timely written claim of accidental injury?
4. Is there any defense that goes to the compensability of the claim?<sup>3</sup>

Additionally, the Board may review those preliminary hearing orders where it is alleged a judge has exceeded his or her jurisdiction or authority in granting or denying the benefits requested.<sup>4</sup>

Claimant's entitlement to medical treatment is not one of the jurisdictional issues listed above over which the Board would take jurisdiction on an appeal from a preliminary hearing order.

Claimant argues in his brief that it is not the medical treatment request which is on appeal but rather whether claimant suffered accidental injury arising out of and in the course of his employment which is in dispute. The ALJ, in his Order, does not specifically make a determination regarding whether claimant suffered accidental injury. What the ALJ does find is that, at most, claimant may have had a temporary increase in symptoms to his back. The fact that claimant suffered an accidental injury on January 19, 2004, is not in dispute. It is the nature and extent of that injury which remains in dispute.

The ALJ determined that claimant is not entitled to additional medical treatment. Whether claimant's low back injury was temporary, as found by the ALJ, resulting in no need for ongoing medical treatment, is not an issue over which the Board would take jurisdiction.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make

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<sup>3</sup> K.S.A. 44-534a.

<sup>4</sup> K.S.A. 2004 Supp. 44-551.

a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>5</sup>

In this instance, the ALJ determined that claimant was not entitled to additional medical care for what he deemed as a temporary increase in symptoms to claimant's low back, which he found had improved to the pre-date of accident level. The Board determines that it does not have jurisdiction to consider claimant's entitlement to medical treatment for that low back condition and, therefore, the appeal of claimant in this matter should be dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth J. Hursh dated July 28, 2005, remains in full force and effect and the appeal of claimant from that Order should be, and is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2005.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Mark J. Hoffmeister, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>5</sup> *Allen v. Craig*, 1 Kan. App. 2d 301, 564 P.2d 552, rev. denied 221 Kan. 757 (1977); *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).